

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

ROBERT W. STANLEY,

Respondent.

*
*
*
*
*
*
*

DOCKET NO.: 12-3838-DB

**ORDER GRANTING GOVERNMENT'S MOTION FOR ORDER TO SHOW
CAUSE WHY APPEAL SHOULD NOT BE DISMISSED**

Introduction

This matter is before the Debarring Official on the Government's Motion for Order to Show Cause Why Appeal Should Not be Dismissed, filed March 26, 2012. In support of its motion, the Government cites Respondent's failure to file a brief, which was due no later than March 15, 2012, pursuant to an Order Setting Hearing Date and Submission Deadline issued February 1, 2012, by the Debarring Official's Designee, and Respondent's failure to appear at the hearing, which, pursuant to the February 1, 2012, Order, was scheduled for March 20, 2012.

Background

By Notice of Proposed Debarment dated November 23, 2011 (Notice), the Department of Housing and Urban Development (HUD) advised Respondent ROBERT W. STANLEY that HUD was proposing his debarment from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for an indefinite period from the date of the final determination of the proposed action.

Respondent was advised that his proposed debarment complied with the procedures set forth in 2 C.F.R. parts 180 and 2424. Further, Respondent was advised that his proposed debarment was based on his conviction in the United States District Court for the Southern District of Texas for violation of 18 U.S.C. § 1349 (Conspiracy to Commit Mail and Wire Fraud) and § 1956(h) (Conspiracy to Commit Money Laundering). Specifically, the Notice stated that Respondent was found to have participated in a money scheme involving the fraudulent use of mail/wire communications in processing residential mortgage loans. The Notice characterized

Respondent's actions as evidence of "serious irresponsibility," which provides cause for his debarment in accordance with the regulations at 2 C.F.R. §§180.800(a)(1), (3), and (4). The Notice also advised Respondent that, because he was a loan officer, he was involved or may reasonably be expected to be involved in covered transactions.

Procedural History and Respondent's Responses

In response to the Notice, Respondent submitted a letter dated December 29, 2011 (received in this office January 9, 2012), addressed to the Debarring Official's Designee, which was treated as a request for a hearing. In his letter, Respondent requested certain materials, attempted to engage in discovery, raised constitutional and legal issues, and discussed his views on selected provisions of the Debarment regulations. In a letter dated December 30, 2011, from this office, responding to Respondent's letter of December 21, 2011, requesting a 30-day extension to file his response, Respondent was given until January 30, 2012, to respond to the Notice.

Respondent next submitted a letter dated February 9, 2011, in which he offered to "forego these proceedings if [he was] offered a debarment for three years like the regulations stipulate." Respondent also offered, as an alternative, to accept a five-year debarment. Respondent further advised that his letter "act[ed] as an administrative collateral estoppel of all actions [because] we do not have a 'meeting of the minds' in this matter of life time debarment." In a letter of March 12, 2012, Respondent inquired, *inter alia*, whether his "counteroffer of three to five years is acceptable according to the regulations" and requested that all interested persons be reminded that the continuation of these "proceedings violate[s] this private administrative remedy process estoppel . . . and must be estopped[sic] at once according to the law, until this private administrative remedy process has been completed."

In a March 18, 2012, letter, Respondent directed that HUD "discontinue [the] hearing process against [him]" [because HUD has] no jurisdiction in this matter to bring any charges, complaints," etc. against him. Respondent also quarreled with HUD's reference to the agency as the "Government" since it was the "Government" acting through the Assistant United States Attorney that brought the criminal case against him, "[t]hereby negating [HUD's] position as the 'Government' because the A.U.S.A ha[d] already done that for the Government." Accordingly, as Respondent views it, HUD cannot "impanel anyone to hear any charges, complaints, claims or assertions that the 'Government' has already tried and convicted [him] on."

Discussion

The Debarment Regulations at 2 C.F.R. § 180.800(a)(1) provide that a Federal agency may debar a person convicted for "commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction." The offenses, to which Respondent pleaded guilty, conspiracy to commit fraud and money laundering, certainly are covered by this provision. Pursuant

to 2 C.F.R. § 180.850(b), “[i]f the proposed debarment is based upon a conviction . . . the standard of proof [i.e., a preponderance of the evidence] is met.” The regulations provide an opportunity for a respondent who wishes to “contest a proposed debarment, [to] provide the debarment official with information in opposition to the proposed debarment.” Under 2 C.F.R. § 180.825(a), “[i]n addition to any information and argument in opposition,” a respondent “must identify (1) “Specific facts that contradict the statements contained in the Notice.”

In this regard, 2 C.F.R. § 180.860 enumerates “the mitigating and aggravating factors that the debarring official may consider in determining whether to debar [a respondent] and the length of [the] debarment period.” Additionally, 2 C.F.R. § 180.845(a) states that “The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists.” In determining whether debarment should be imposed, “[t]he debarring official bases the decision on all information contained in the official record [which] includes [a]ny further information and argument presented in support of, **or in opposition to**, the proposed debarment.” (Emphasis added.) See §180.845(b)(2).

The above-cited authorities provide the regulatory framework to determine the issue of Respondent’s debarment. Respondent already bore a heavy burden by virtue of 2 C.F.R. § 180.800, which makes the offenses for which he was convicted a cause for debarment. Respondent, however, as a reading of his responses makes clear, engaged more in polemics than in identifying “specific facts that contradict the statements contained in the Notice of Proposed Debarment.” 2 C.F.R. § 180.825(a)(1). Respondent also chose to ignore pleading any of the mitigating factors in 2 C.F.R. § 180.860.

Accordingly, based on the record before me, including the Government’s brief, in which nothing therein was refuted by Respondent, I find that Respondent should be debarred. Respondent’s conduct was egregious and bespeaks of someone who lacks “business integrity or business honesty that seriously and directly affects [his] present responsibility.” See 2 C.F.R. § 180.800(a)(4). Respondent as a loan officer may be expected to engage in covered transactions some time in the future. Respondent’s conduct that led to his criminal conviction, along with his unconventional responses to this action, shows that he is not yet responsible and that the public interest needs to be protected from him. See 2 C.F.R. § 180.125(a).

Respondent makes much of the provision in 2 C.F.R. § 180.865(a) that “[g]enerally, debarment should not exceed three years.” The next sentence, which seems to have escaped Respondent’s attention, states “if circumstances warrant, the debarring official may propose a longer period of debarment.” I find that the circumstances in this case, fully reflected in the record, warrant a longer period of debarment, to wit, an indefinite period of debarment.

The Government's Motion to Show Cause

The Government moves to have Respondent's appeal dismissed for the reasons recited *supra*. The reasons cited by the Government are, I find, sufficient to dismiss Respondent's appeal. Additionally, it should be noted that Respondent has not filed a response to the Government's motion, which was filed March 26, 2012. Respondent's failure to date to respond, at the very least, creates a negative inference regarding his appeal and in prosecuting his appeal. The above discussion, which would not usually be required in ruling on a motion to show cause as the one filed in this matter, serves to provide substantive reasons, beyond the reasons in the motion, for affirming the proposed debarment of Respondent.

Conclusion

WHEREFORE, it is ORDERED that, the Government's Motion for Order to Show Cause Why Appeal Should not be Dismissed be, and it is hereby, GRANTED.

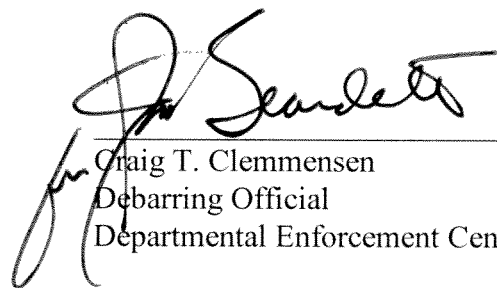
It is further ORDERED that Respondent's proposed debarment for an indefinite period be, and it is hereby, AFFIRMED;

It is further ORDERED that Respondent's appeal of his debarment be DISMISSED; and

It is further ORDERED that Respondent's indefinite debarment "is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 C.F.R. chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: _____

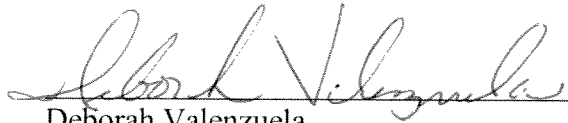
4-16-12



Craig T. Clemmensen
Debarring Official
Departmental Enforcement Center

CERTIFICATE OF SERVICE

I hereby certify that on this 16TH day of April, 2012, a true copy of the ORDER GRANTING GOVERNMENT'S MOTION FOR ORDER TO SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED was served in the manner indicated.



Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center-Operations

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Andrea Lee, Esq.
Melissa B. Silverman, Esq.
Ana I. Fabregas, Esq.
Government Counsel

CERTIFIED MAIL

Robert W. Stanley

